

UNITED STATES DISTRICT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EFFICIENT AND RELIABLE OF MICHIGAN, INC.
d/b/a CO/OP OPTICAL VISION DESIGNS,

Plaintiff,

v.

ARTIS THOMAS,

Defendant.

Case: 2:07-cv-11086

Assigned To: Roberts, Victoria A

Referral Judge: Morgan, Virginia M

Filed: 03-14-2007 At 09:40 AM

CMP EFFICIENT AND RELIABLE V THOMAS
(RRH)

BUTZEL LONG

By: Michael G. Latiff (P51263)

150 W. Jefferson

Suite 100

Detroit, MI 48226

(313) 225-7000

Attorneys for Plaintiff

VERIFIED COMPLAINT

For its Verified Complaint against Defendant Artis Thomas, Plaintiff, Efficient and Reliable of Michigan, Inc., states as follows:

PARTIES, JURISDICTION AND VENUE

1. Efficient and Reliable of Michigan, Inc. d/b/a Co/Op Optical Vision Designs ("Co/Op Optical"), is a Michigan domestic not for profit organization, organized under the laws of the State of Michigan which operates and does business in the City of Detroit, County of Wayne, State of Michigan.

2. Upon information and belief, Artis Thomas, ("Thomas"), is a resident of the City of Eastpointe, County of Macomb, State of Michigan.

3. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 because Thomas' acts constitute violations of Federal Law, including the Computer Fraud and Abuse Act, 18 U.S.C. §1030. This Court has supplemental jurisdiction over any and all related state law claims pursuant to 28 U.S.C. §1367.

4. Venue is proper in this Court pursuant to 28 U.S. C. §1391.

GENERAL ALLEGATIONS

5. Thomas began her employment with Co/Op Optical on or about August 13, 2001 as a Payroll/Human Resource Assistant. On or about February 1, 2002, Thomas was promoted to Payroll/Human Resources Manager, a position she held until her termination on or about February 9, 2007.

6. As Payroll/Human Resources Manager, Thomas reported directly to the President and CEO of Co/Optical, Jackee Smith ("Smith").

7. During the years 2004 and 2005, Thomas was reprimanded by Co/Op Optical for violations of company rules, and later, for sending electronic communications containing confidential and proprietary information to Thomas' home email account.

8. On or about November 14, 2006, Thomas was specifically reprimanded for sending emails to her home account containing proprietary and confidential information. As a result of this action, Thomas was advised yet again against such activity and was placed on probation. Additionally, Thomas was instructed to refrain from forwarding any emails, she was removed from attending Directors meetings and was removed from any ongoing union negotiations. It was specifically provided at that time that if further violations of company policy occurred, Thomas would be terminated.

9. On or about February 9, 2007, it was determined that Artis Thomas had again violated company policies and her employment with Co/Op Optical was terminated.

10. Immediately following the termination meeting in the Human Resources office, Thomas went back to her computer and began to execute computer commands.

11. At this point, and within minutes, Smith demanded that Thomas immediately cease and desist from such activity and leave the premises.

12. Thomas refused to leave and ignored the instruction from Smith.

13. As a result, Smith was caused to take the computer keyboard in order to stop Thomas from further inputting computer commands.

14. At that point Thomas left the premises and Smith attempted to identify what function or impact Thomas had performed on the computer or the system network.

15. Shortly thereafter, Co/Op Optical retained the services of an independent computer forensic specialist, Spectrum Computer Forensics and Risk Management, LLC, to analyze and determine what damage Thomas' accessing of the computer had caused.

16. It was determined that Thomas had intentionally and purposefully caused company information to be deleted from both Thomas' CPU hard drive, and the Co/Op Optical system network, including, but not limited to her Co/Op Optical email file (i.e. Outlook .pst file).

17. The Outlook software application allows company personnel to utilize email both internally and externally. It was determined through forensic analysis that Thomas' email Outlook files had been purposefully and intentionally deleted from both the system network and the hard drive on her designated CPU, such that Thomas had virtually no email traffic from

approximately July of 2006 through the date of termination. This is an impossibility as she utilized email on a daily basis in her role as Payroll/Human Resources Manager.

18. While Co/Op Optical's forensic analysis is ongoing, it has been confirmed that Thomas purposefully and intentionally deleted and destroyed company documents without authorization.

**COUNT I – VIOLATION OF FEDERAL COMPUTER FRAUD AND
ABUSE ACT 18 U.S.C. §1030 ET.SEQ.**

19. Plaintiff incorporates by reference the preceding Paragraphs of this Complaint as though fully stated herein.

20. The Federal Computer Fraud and Abuse Act ("CFAA") provides that it is a violation of the Act to:

knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and the means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than \$5,000 in any one year period; 18 U.S.C. §1030 a (4) .

21. The CFAA also provides:

(A) (i) that whoever knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to protect a computer; (ii) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damages; or (iii) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage;

(B) by conduct described in (i), (ii), (iii) of subparagraph (A) caused. . .

(i) loss to any one or more persons during the one year period. . . aggregating at least \$5,000 in value. . .

18 U.S.C. §1030 (a)(5).

22. Furthermore the CFAA provides that “any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief for other equitable relief. . .”. 18 U.S.C. §1030 (g).

23. Finally, the CFAA provides that the term loss means “any reasonable cost to any victim” and includes “the cost of responding to a defense, conducting a damage assessment. . . and any revenue lost, cost incurred, or other consequential damages incurred. . .”. 18 U.S.C. §1030 (e) (11).

24. Thomas knowingly accessed Co/Op Optical’s computers with the intention of defrauding, Co/Op Optical, and damaging and deleting critical information of Co/Op Optical.

25. Furthermore, Thomas knowingly caused the transmission of programs, information, code or commands which caused damage to Co/Op Optical, without authorization, and specifically in disregard of specific instructions to Thomas.

26. Thomas deleted critical information to hide, defraud, cover up the transmission of information external to Co/Op Optical of company information causing damage as a result.

27. Furthermore, Co/Op Optical has engaged in efforts to identify the loss including conducting a damage assessment and restoring data in attempting to recover the information that had been deleted and/or transferred by Thomas in excess of \$5,000.

WHEREFORE, Co/Op Optical requests this Court (i) enter a judgment in its favor and against Thomas in an amount in excess of \$5,000 exclusive of costs, interest and reasonable attorney fees, (ii) issue an Order declaring that Thomas must return all confidential, proprietary and unauthorized information and allow Co/Op Optical access to her personal computer email and devices for the conduction of a forensic analysis in order to confirm the return and deletion of all materials, and (iii) award any other such relief that this Court deems appropriate.

COUNT II – CONVERSION

28. Plaintiff incorporates by reference the preceding Paragraphs of this Complaint as though fully stated herein.

29. Thomas, has intentionally converted and misappropriated property of Co/Op Optical for her own use and benefit without the express or implied consent of Co/Op Optical.

30. Thomas has an obligation to return Co/Op Optical's property to Co/Op Optical.

31. Thomas has (i) wrongfully taken and converted Co/Optical's property, to wit, confidential information, without Co/Op Optical's consent and in direct disregard of Co/Op Optical's company policy and instruction; and (ii) interfered with Co/Op Optical's ability to use its confidential information in violation of Co/Op Optical's possessory rights and in beneficial ownership of the property.

32. Co/Op Optical has possessory rights in, and beneficial ownership of, the property taken and converted by Thomas' wrongful conduct.

33. Thomas' failure and refusal to return Co/Op Optical's property is unlawful and in violation of Co/Op Optical's possessory rights in, and beneficial ownership of, its property.

34. As a direct and proximate consequence of Thomas' wrongful conduct in converting for herself Co/Op Optical's property, Co/Op Optical has and continues to suffer damages.

35. Additionally, Co/Op Optical is entitled to three times the amount of its actual damages plus its costs and reasonable attorneys' fees pursuant to MCL §600.2919(a).

WHEREFORE, Co/Op Optical requests this Court (i) enter a judgment in its favor and against Thomas in an amount in excess of \$5,000 exclusive of costs, interest and reasonable attorney fees, (ii) issue an Order declaring that Thomas must return all confidential, proprietary

and unauthorized information and allow Co/Op Optical access to her personal computer email and devices for the conduction of a forensic analysis in order to confirm the return and deletion of all materials, and (iii) award any other such relief that this Court deems appropriate.

BUTZEL LONG

By: 

Michael G. Latiff (P51263)

150 W. Jefferson
Suite 100
Detroit, MI 48226
(313) 225-7000


Attorneys for Plaintiff

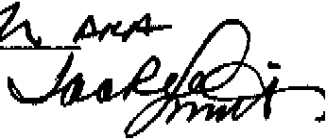
Dated: 3/14/07

908358

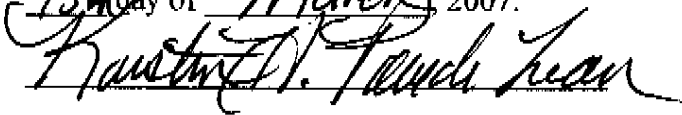
VERIFICATION

I, Jackee Smith, President and CEO of Efficient and Reliable of Michigan, Inc. d/b/a Co/Op Optical Vision Designs, do state under oath that I have read this Verified Complaint in its entirety and the factual allegations contained herein are true and accurate to the best of my information, knowledge and belief.



Jackee Smith 

Subscribed and sworn to before me this
13th day of March, 2007.



KRISTEN H. PONCEDELEON
Notary Public, State of Michigan
County of Macomb
My Commission Expires Mar. 26, 2012
Acting in the County of Wayne

This is a 4 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the clerk of the Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM)

(a) PLAINTIFFS

EFFICIENT AND RELIABLE OF MICHIGAN, INC.
d/b/a CO/OP OPTICAL VISION DESIGNS,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Wayne County, MI
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael G. Latiff (P51263)
Timothy J. Lowe (P68669)
Ste. 100, 150 W. Jefferson
Detroit, MI 48226
(313) 225-7000

DEFENDANTS

ARTIS THOMAS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Macomb County, MI
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

Maroun Hakim (P28489)
29900 Harper Ave, #E
Saint Clair Shores, MI 48082
(586) 415-4900

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For I

Citizen of T

Citizen of A

Citizen or S
Foreign Co

Case: 2:07-cv-11086

Assigned To: Roberts, Victoria A

Referral Judge: Morgan, Virginia M

Filed: 03-14-2007 At 09:40 AM

CMP EFFICIENT AND RELIABLE V THOMAS

(RRH)

IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input checked="" type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suit <input checked="" type="checkbox"/> 165 Other Contract <input type="checkbox"/> 165 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med Malpractice <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 388 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety & Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patents <input type="checkbox"/> 840 Trademarks SOCIAL SECURITY <input type="checkbox"/> 801 HIA (13965FF) <input type="checkbox"/> 802 Black Lung (923) <input type="checkbox"/> 803 DIWC/DIWW(405(g)) <input type="checkbox"/> 804 SSID Title XVI <input type="checkbox"/> 805 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Rocketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Services <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matter <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgt. Relations <input type="checkbox"/> 730 Labor/Mgt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Sec. Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 28 USC 7609

V. ORIGIN

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from another district (specify):

☐ 6 Multidistrict Litigation

Appeal to District
☐ 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Computer Fraud and Abuse Act, 18 U.S.C. §1030.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint

JURY DEMAND:

☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE March 14, 2007

SIGNATURE OF ATTORNEY OF RECORD

Michael G. Latiff (P51263)

Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes: _____